

# Thomas-Jensen Affirmation

Exhibit # 122

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

C.A. No. 25-CV-39-JJM-PAS

**DECLARATION OF ERICK SCHEMINSKE IN SUPPORT OF  
THE STATES' REQUEST FOR PRELIMINARY INJUNCTION**

I, Erick Scheminske, hereby declare and state as follows:

1. I am the current Chief Operating Officer of the Colorado Department of Public Health and Environment (CDPHE). CDPHE is a principal department whose executive director is appointed by the Governor of Colorado. *See* Colo. Const. Art. 4 § 22. CDPHE serves Coloradans by providing high-quality, cost-effective public health and environmental protection services that promote healthy people in healthy places. I have served in this role since 2021.

2. I make this declaration as a representative of CDPHE, in part based on the business records of CDPHE and the State of Colorado, and in part based on my personal knowledge and experience. In my official capacity and based on my personal knowledge and other sources of information I have obtained and reviewed in that official capacity, I am familiar with, and if called upon to do so, would be competent to testify to the facts and circumstances set forth herein.

3. I submit this declaration in support of Plaintiff States' Request for Preliminary Injunction in this matter, which challenges the federal funding freeze triggered by various

Executive Orders issued by President Trump and federal agency actions that seek to implement aspects of those Orders. In particular, this declaration addresses the effects of federal agencies' attempt to pause disbursement of federal grant and loan funds appropriated by Congress under the Inflation Reduction Act of 2022 (IRA) and the Infrastructure Investment and Jobs Act (IIJA), as well as separate health-related funding.

4. CDPHE has been awarded over \$98 million in direct funding to the agency under the IRA and IIJA, including formula funding and competitive grants. To date the state has contracted for \$23.6 million of this funding with subrecipients. Colorado also receives additional IRA and IIJA funding for the State Revolving Fund, which is awarded through a separate authority, with a total estimated amount of \$585 million in funds awarded over five years, of which \$222 million has been received to date. Consistent with the instructions of the IRA and IIJA, Colorado uses these funds to support a wide array of programs designed to benefit Coloradans. Details regarding a sample of specific grants are set forth below.

5. To date, the overall result of the attempts to pause disbursement of federal funding pursuant to Executive Orders has been to create confusion and uncertainty regarding the status of the federal funds that CDPHE and its partner agencies rely on to protect the environment and improve public health.

#### **Reducing Lead in Drinking Water**

6. Among many other functions, CDPHE serves as the program administrator for Colorado's State Revolving Fund, which it jointly administers with the Department of Local Affairs (DOLA) and the Colorado Water Resources & Power Development Authority (Authority). The State Revolving Fund administers loan awards from the Environmental Protection Agency (EPA) under both the Clean Water Act and the Safe Drinking Water Act. As

program administrator, CDPHE provides technical assistance and establishes eligibility criteria for the program, in partnership with DOLA and the Authority, which are approved by the Colorado Water Quality Control Commission.

7. Under the IIJA, Colorado has been awarded \$88.6 million to address lead in drinking water systems through the Drinking Water Revolving Fund; this award covers the first two years of this five-year program. The estimated total amount of Colorado's funding for all five years of this program under the IIJA is \$215.8 million. A true and accurate copy of the award document is attached hereto as Exhibit A. This funding is intended to help public water systems and states achieve the health protection objectives of the Safe Drinking Water Act, with a specific grant to address removal of lead service lines. These service lines can leach lead into drinking water as it is delivered to customers' homes. Lead is dangerous to human health and EPA has determined that there is no safe level of lead in drinking water.

8. CDPHE has received confusing communications from federal agencies regarding the status of federal funds, including a memorandum dated January 27, 2025, issued by the Acting Chief Financial Officer of the EPA. That memorandum indicates that all disbursements for unliquidated obligations funded by the IRA and the IIJA are paused to allow for review of the programs pursuant to section 7 of the Unleashing American Energy Executive Order. It is unclear how this review could impact Colorado's funding appropriated under the IRA and IIJA. CDPHE has since received an updated communication indicating that funding has resumed as a result of a court directive. However, based on email correspondence between EPA and the Authority, it is my understanding that the grant award fund for Colorado's 2023 Drinking Water Revolving Fund lead reduction grant program was not accessible as of the afternoon of February 4, 2025. In light of the continued effect of the "Unleashing American Energy" Executive Order, which directs all

agencies to immediately pause disbursement of certain funds appropriated through the IRA and IIJA, CDPHE expects the status of this funding to continue to be uncertain absent court intervention.

9. Any pause in funding for the lead service line replacement program could interfere with completion of ongoing projects to remove lead service lines from public water systems and put subrecipients' businesses at risk.

#### **Emerging Contaminants Funding**

10. As another example of funding critical to CDPHE's mission, CDPHE also received a direct IIJA grant under the Water Infrastructure Improvements for the Nation Act designated to address emerging contaminants in drinking water. One such contaminant is a group of chemicals known as per- and polyfluoroalkyl substances (PFAS), which is prevalent in Colorado's drinking water supplies and has been linked with serious health impacts. Colorado has been awarded approximately \$42 million per year over five years under this program to address emerging contaminants in drinking water, including PFAS. In the first two years of the program, CDPHE has been awarded over \$85 million in funding through this program, and has obligated \$20.5 million to contractors to work on drinking water treatment projects and other projects to address PFAS contamination in drinking water. A true and accurate copy of the award is attached hereto as Exhibit B. Any pause in funding for this program could interfere with completion of ongoing projects to address PFAS in drinking water.

#### **Other Impacted Funding**

11. In addition to the IRA and IIJA funding discussed above, CDPHE receives significant federal funding under other statutes and programs to support its public health and environmental protection work. As a result of the directive to pause disbursement of federal

funding, CDPHE experienced disruption in funding it has been awarded from the federal Department of Health and Human Services.

12. Specifically, on January 31, 2025 CDPHE submitted a request for funding for more than 50 programs totalling \$2,929,682.14 through the Payment Management System (PMS) federal funding portal. Based on past experience, it typically takes one business day to process these requests. As of February 5, 2025, that funding draw is still pending. CDPHE staff inquired as to when they could expect payment, and the PMS Customer Support agent responded as follows: “If the debit date does not display after one business day and you do not see the payment, please note that due to executive orders regarding potentially unallowable grant payments, PMS is taking additional measures to process grant payments. Reviews of applicable programs and payments will result in delays and/or rejections of payments.” A true and accurate copy of the email is attached hereto as Exhibit C.

13. This request for funding includes critical public health programs, such as lead poisoning prevention, hospital emergency preparedness, cancer prevention and control, immunizations, emerging infections, laboratory capacity, environmental public health tracking, and public health workforce. Additionally, funds for the Ryan White program, which provides services and supports for individuals who have tested positive for HIV/AIDS, are included in this pending request, and total \$569,897.07.

14. Failure to approve these payment requests, which are all part of approved grants issued by the Department of Health and Human Services, could result in a stoppage of work in one or more of the programs, which may have serious, direct consequences for Coloradans who benefit from these programs. Programs such as the Ryan White program provide HIV+ individuals with access to necessary medication. Laboratory testing to confirm sources of

contamination or disease would be reduced or stopped. Data collection for lead poisoning would be reduced, resulting in less community awareness of lead poisoning and fewer public health resources available to educate others about the risks of lead poisoning, which for children can have lifelong impacts or could result in death.

**SIGNED UNDER THE PENALTIES OF PERJURY THIS 5th DAY OF FEBRUARY, 2025.**

**Erick**


**Scheminske**

Digitally signed by  
Erick Scheminske  
Date: 2025.02.05  
18:00:09 -07'00'

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Erick Scheminske

Chief Operating Officer, Colorado Department of  
Public Health and Environment

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Grant Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 96894923	<b>DATE OF AWARD</b>
		<b>MODIFICATION NUMBER:</b> 0	10/27/2023
		<b>PROGRAM CODE:</b> 4L	<b>MAILING DATE</b>
		<b>TYPE OF ACTION</b> New	11/01/2023
		<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b> 80008
<b>RECIPIENT TYPE:</b> State		<b>Send Payment Request to:</b> Contact EPA RTPFC at: rtpfc-grants@epa.gov	
<b>RECIPIENT:</b>  CO Water Resources & Power Development Authority 1580 N. Logan Street, Suite 820 Denver, CO 80203-1939 EIN: 84-0879485		<b>PAYEE:</b>  CO Water Resources & Power Development Authority 1580 N. Logan Street, Suite 820 Denver, CO 80203-1939	
<b>PROJECT MANAGER</b>  Mark Henderson 4300 Cherry Creek Drive South Denver, CO 80246-1523 Email: Mark.Henderson@state.co.us Phone: 720-258-6450	<b>EPA PROJECT OFFICER</b>  Jennifer Berig 1595 Wynkoop Street Denver, CO 80202-1129 Email: Berig.Jennifer@epa.gov Phone: 303-312-6262	<b>EPA GRANT SPECIALIST</b>  John Hurla 1595 Wynkoop Street Denver, CO 80202-1129 Email: hurla.john@epa.gov Phone: 303-312-7047	
<b>PROJECT TITLE AND DESCRIPTION</b>  Bipartisan Infrastructure Law: Drinking Water State Revolving Fund - Lead Service Line Replacement  See Attachment 1 for project description.			
<b>BUDGET PERIOD</b> 11/01/2022 - 10/31/2029	<b>PROJECT PERIOD</b> 11/01/2022 - 10/31/2029	<b>TOTAL BUDGET PERIOD COST</b> \$ 32,600,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$ 32,600,000.00
<b>NOTICE OF AWARD</b>  Based on your Application dated 09/27/2023 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 32,600,000.00. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 32,600,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b>  U.S. EPA, Region 8, Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, CO 80202-1129		<b>ORGANIZATION / ADDRESS</b>  U.S. EPA, Region 8, Environmental Protection Agency, Region 8 R8 - Region 8 1595 Wynkoop Street Denver, CO 80202	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
<b>Digital signature applied by EPA Award Official Sarah Hulstein</b>			<b>DATE</b> 10/27/2023



## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 0	\$ 32,600,000	\$ 32,600,000
EPA In-Kind Amount	\$ 0	\$ 0	\$ 0
Unexpended Prior Year Balance	\$ 0	\$ 0	\$ 0
Other Federal Funds	\$ 0	\$ 0	\$ 0
Recipient Contribution	\$ 0	\$ 0	\$ 0
State Contribution	\$ 0	\$ 0	\$ 0
Local Contribution	\$ 0	\$ 0	\$ 0
Other Contribution	\$ 0	\$ 0	\$ 0
Allowable Project Cost	\$ 0	\$ 32,600,000	\$ 32,600,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.468 - Capitalization Grants for Drinking Water State Revolving Funds	Safe Drinking Water Act: Sec. 1452 & Infrastructure Investment and Jobs Act (IIJA) (PL 117-58)	2 CFR 200, 2 CFR 1500, 40 CFR 33 and 40 CFR 35 Subpart L

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
23DF	2408TTB005	23	E3SD	08T1	000B81X71	4109	23DF	-	\$ 3,260,000
23DD	2408TTB005	23	E3SD	08T1	000B81X71	4109	23DD	-	\$ 1,304,000
23DA	2408TTB005	23	E3SD	08T1	000B81X71	4109	23DA	-	\$ 28,036,000
									\$ 32,600,000

## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 0
2. Fringe Benefits	\$ 0
3. Travel	\$ 0
4. Equipment	\$ 0
5. Supplies	\$ 0
6. Contractual	\$ 0
7. Construction	\$ 0
8. Other	\$ 32,600,000
9. Total Direct Charges	\$ 32,600,000
10. Indirect Costs: 0.00 % Base	\$ 0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 32,600,000
12. Total Approved Assistance Amount	\$ 32,600,000
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 32,600,000
15. Total EPA Amount Awarded To Date	\$ 32,600,000

## **Attachment 1 - Project Description**

This agreement provides funding to the Colorado Water Resources and Power Development Authority. Safe Drinking Water Act (SDWA): Section 1452 and Infrastructure Investment and Jobs Act (IIJA) PL 117-58 authorizes the state to utilize funds to further the health protection objectives of SDWA. This agreement will provide funds to capitalize the recipient's DWSRF with an emphasis on lead service line replacement and associated activities directly connected to the identification, planning, design, and replacement of lead service lines. As part of this agreement, the state ensures compliance with federal and state regulations, which are designed to protect public health. The state has submitted an Intended Use Plan (IUP) as part of the application package for this capitalization grant. This agreement will provide funds to capitalize the recipient's DWSRF with an emphasis on lead service line replacement and associated activities directly connected to the identification, planning, design, and replacement of lead service lines. This IUP contains a list of the capital projects that may receive funding from this grant and a description of the eligible activities funded by the set-asides.

The benefits of this grant will be to capitalize the recipient's DWSRF with an emphasis on lead service line replacement and associated activities directly connected to the identification, planning, design, and replacement of lead service lines. The fund can be used to develop or update lead service line inventories and provide technical assistance to small water systems undertaking lead service line inventories or construction projects. These public health benefits will be statewide.

The state has submitted an Intended Use Plan (IUP) as part of the application package for this capitalization grant. This agreement will provide funds to capitalize the recipient's DWSRF with an emphasis on lead service line replacement and associated activities directly connected to the identification, planning, design, and replacement of lead service lines. This IUP contains a list of the capital projects that may receive funding from this grant and a description of the eligible activities funded by the set-asides.

## Administrative Conditions

### National Administrative Terms and Conditions

#### General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2023-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

#### A. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): [rtfpc-grants@epa.gov](mailto:rtfpc-grants@epa.gov) and to the Grants Management Specialist, **Chris Barnes**, at [Barnes.Christopher@epa.gov](mailto:Barnes.Christopher@epa.gov).
- MBE/WBE reports (EPA Form 5700-52A): Grants Management Specialist, **Chris Barnes**, at [Barnes.Christopher@epa.gov](mailto:Barnes.Christopher@epa.gov).
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Project Officer, **Jennifer Berig**, at [Berig.Jennifer@epa.gov](mailto:Berig.Jennifer@epa.gov) and Grants Management Specialist, **Chris Barnes** at [Barnes.Christopher@epa.gov](mailto:Barnes.Christopher@epa.gov).
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Project Officer, **Jennifer Berig**, at [Berig.Jennifer@epa.gov](mailto:Berig.Jennifer@epa.gov).

## Programmatic Conditions

### FFY 2023 BIL/IIJA DWSRF Lead Service Line Replacement Programmatic Terms and Conditions

#### A. Payment Schedule

The recipient agrees to accept grant funds that will be released by EPA utilizing the ASAP payment method. Access to these funds will be in accordance with the following schedule:

Colorado DWSRF BIL LSL FY23 Payment Schedule				
1QFY24	2QFY24	3QFY24	4QFY24	TOTAL
\$32,600,000	\$0	\$0	\$0	\$32,600,000

#### B. Intended Use Plan and Operating Agreement

The entire contents of the Bipartisan Infrastructure Law (BIL)/Infrastructure Investment and Jobs Act (IIJA) Lead Service Line Replacement SFY 2023 Intended Use Plan (IUP) and (if applicable) the Operating Agreement (OA) are incorporated hereto by reference and made a part of this Assistance Agreement. For a project or activity to be eligible for funding under this appropriation, it must be otherwise be eligible under the Drinking Water State Revolving Fund (DWSRF) program and be a lead service line replacement (LSLR) project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines.

#### C. Amended Cash Draw Proportionality

As of November 18, 2022, recipients are no longer required to comply with the cash draw rules in the Clean Water State Revolving Fund (CWSRF) regulations at 40 CFR 35.3155(d)(5)(i) and (ii) and 40 CFR 35.3160(b)(2)-(4) and Drinking Water State Revolving Fund (DWSRF) regulations at 40 CFR 35.3560(f) and (g) and 40 CFR 35.3565(b). For further details on this change, see the linked [notification memo](#) from Division Directors Raffael Stein and Anita Maria Thompkins dated November 30, 2022.

#### D. Set-Aside Work Plan

The recipient agrees to perform the activities identified and specified in the work program plan, which is made part of this Assistance Agreement. Set-asides under this appropriation must be used to either administer this capitalization grant or meet the statutory purpose of these funds: “for lead service line

replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines.”

#### E. Set-Aside Sub-Grants and Contracts

The recipient shall provide or make available to the Region 8 Drinking Water Branch Chief copies of the work plans associated with grants and contracts that it may enter into with other agencies and organizations related to activities conducted under this grant. In its semi-annual report, the grant recipient shall include a summary description of activities completed under grants and contracts entered

into with funds made available under the grant.

## **F. Travel**

EPA approves the use of Federal funds for travel budgeted in capitalization grants for implementing the Drinking Water SRF (DWSRF) program. The recipient agrees to use Federal funds to participate in training and professional development activities integral to the effective implementation and management of the DWSRF program.

## **G. SRF Data System and Public Health Benefits Reporting**

The recipient agrees to input data, as required by EPA, into the SRF Data System. The recipient of funds for the SRF BIL, also known as the IIJA, 2021, P.L. 117-58, agrees to comply with all requests for data related to the use of the funds under Section 1452 of the Safe Drinking Water Act (SDWA), and to report all uses of the funds no less than quarterly, as the Environmental Protection Agency specifies for the SRF Data System. This reporting shall include but not be limited to data with respect to compliance with the DWSRF discretionary Green Project Reserve and additional subsidization requirements as specified in P.L. 117-328 (the Consolidated Appropriations Act, 2023), and P.L. 117-58, respectively. EPA agrees to provide technical assistance to the State in its use of the SRF Data System.

## **H. Biennial/Annual Reporting**

In accordance with 2 CFR 200.328 and 40 CFR 35.3570, the recipient agrees to provide in its Biennial/Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas: 1) achievement of the outputs and outcomes established in the IUP; 2) the reasons for delays if established outputs or outcomes were not met; 3) any additional pertinent information on environmental/public health results; 4) compliance with the Green Project Reserve discretionary requirement; and 5) use of additional subsidization.

## **I. Set-Aside Reporting**

The recipient agrees to provide to the Region 8 Drinking Water Branch Chief an annual report on the set-aside activities funded under this grant. These reports shall be provided annually each year the grant is in effect.

## **J. Program Income from Administrative Fees**

The recipient agrees to maintain program income resulting from program operations generated during the project period (e.g., administrative fees collected from DWSRF project loan recipients) in an account separate from the DWSRF project loan fund. In addition, the recipient agrees that such program income shall be used only for purposes related to the administration of the DWSRF program or other purposes authorized pursuant to EPA regulations.

## **K. SIGNAGE REQUIRED**

### **1. Signage Requirements**

- a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America

emblem and must identify the project as a “project funded by President Biden's Bipartisan Infrastructure Law” or “project funded by President Biden's Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investing-america-signage>.

b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

## 2. Public or Media Events

EPA encourages the recipient to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

### L. Additional Subsidization

The recipient agrees to use 49 percent of the funds made available in the capitalization grant to provide additional subsidy to disadvantaged communities as described in section 1452(d) of the Safe Drinking Water Act (SDWA) in the form of forgiveness of principal or grants (or any combination of these), which shall be used only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where such debt was incurred after November 15, 2021.

### M. Full Lead Service Line Replacement

The recipient agrees to ensure that any project funded in whole or in part under this capitalization grant involving LSLR must replace the entire lead service line, not just a portion, unless a portion has already been replaced or is concurrently being replaced with another funding source.

### N. Green Project Reserve

The recipient agrees that the funds provided by this capitalization grant may, at the discretion of the recipient, be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

### O. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).

## **P. American Iron and Steel (AIS)**

### **(a) *Definitions.*** As used in this award term and condition—

(1) “iron and steel products” mean the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(2) “steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

### **(b) *Domestic preference.***

(1) This award term and condition implements the Safe Drinking Water Act, section 1452(a)(4), by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system are produced in the United States except as provided in paragraph (b)(2) of this section and condition.

(2) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that—

(i) applying the requirement would be inconsistent with the public interest;

(ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(3) The Build America, Buy America (BABA) Act requirement does not supersede the AIS requirement, and both provisions still apply and work in conjunction.

### **(c) *Request for a Waiver under (b)(2) of this section***

(1) Any recipient request to use foreign iron or steel products in accordance with paragraph (b)(2) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;



(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(2) of this section.

(2) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.

(3) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the Safe Drinking Water Act, section 1452(a)(4).

(d) This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

#### **Q. State Cybersecurity**

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any sub-awards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the sub-recipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in sub-award agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

## **R. Internal Controls for Financial Transactions**

The recipient agrees to use procedures consistent with “zero-trust” (never trust, always verify) for all financial transactions with SRF funds. These procedures must include verbal verification with a trusted recipient representative of all financial account information both initially and prior to any changes in financial account information.

## **S. Wage Rate Requirements**

The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water revolving loan fund as authorized by Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of Section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled “Wage Rate Requirements Under The Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e).” This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

## **Preamble**

With respect to the DWSRF program, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section I-3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the sub recipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

## **ATTACHMENT 1**

### **I. Requirements Under Section 1452(a)(5) of the Safe Drinking Water Act For Sub recipients That Are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact EPA's Office of Grants and Debarment for guidance at [EPA\\_Grants\\_Info@epa.gov](mailto:EPA_Grants_Info@epa.gov). The recipient or sub recipient may also obtain additional guidance from U.S. Department of Labor's (DOL) website at <http://www.dol.gov/whd/>

#### **1. Applicability of the DB prevailing wage requirements.**

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

#### **2. Obtaining Wage Determinations.**

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor <https://sam.gov/> weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project carried out in whole or in part with assistance made available by the DWSRF, and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the Safe Drinking Water Act, Section 1452(a)(5), the following clauses:

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the DB Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the DB

poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from DOL's website, <https://sam.gov/>.

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) and supporting materials to [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov) and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) which indicates the State award official's disagreement and supporting materials to [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov) and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or



mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the DB Act have been met. The Secretary of Labor may require the contractor to set aside assets in a separate account for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the EPA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the DB Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DB Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in

compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the DOL, and shall permit such representatives to interview employees during

working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the EPA or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be



paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with DB and Related Act requirements. All rulings and interpretations of the DB and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub recipient(s), State, EPA, DOL, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the DOL, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen,

working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractor's and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S DOL or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/agencies/whd/contact/local-offices>.

## **II. Requirements Under Section 1452(a)(5) of the Safe Drinking Water Act For Sub recipients That Are Not Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the Safe Drinking Water Act, Section 1452(a)(5) with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact EPA's Office of Grants and Debarment for guidance at [EPA\\_Grants\\_Info@epa.gov](mailto:EPA_Grants_Info@epa.gov). The recipient or sub recipient may also obtain additional guidance from DOL's website at <http://www.dol.gov/whd/>.

**Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.**

## **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the Safe Drinking Water Act, Section 1452(a)(5), DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

## **2. Obtaining Wage Determinations.**

(a) Sub recipients must obtain proposed wage determinations for specific localities at <https://sam.gov/>. After the sub recipient obtains its proposed wage determination, it must submit the wage determination to Mark Henderson, [mark.henderson@state.co.us](mailto:mark.henderson@state.co.us), 720-258-6450 for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor <https://sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the

solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

(d) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project carried out in whole or in part with assistance made available by the DWSRF, and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the Safe Drinking Water Act, Section 1452(a)(5), the following clauses:

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the DB Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination



for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the DB poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from DOL's website, <https://sam.gov/>.

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient(s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) and supporting materials to [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov) and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) which indicates the State award official's disagreement and supporting materials to [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov) and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the DB Act have been met. The Secretary of Labor may require the contractor to set aside assets in a separate account for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the EPA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the DB Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DB Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the



United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the EPA or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal

certification by the DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with DB and Related Act requirements. All rulings and interpretations of the DB and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub recipient(s), State, EPA, DOL, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any

person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient shall upon the request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.


(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S DOL or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at

<https://www.dol.gov/agencies/whd/contact/local-offices>.

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Grant Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 00I43100	<b>DATE OF AWARD</b>
		<b>MODIFICATION NUMBER:</b> 0	11/21/2023
		<b>PROGRAM CODE:</b> 48	<b>MAILING DATE</b>
		<b>TYPE OF ACTION</b> New	11/27/2023
		<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b> 80011
<b>RECIPIENT TYPE:</b> State		<b>Send Payment Request to:</b> Contact EPA RTPFC at: rtpfc-grants@epa.gov	
<b>RECIPIENT:</b> CO Department of Public Health and Environment 4300 Cherry Creek South DR Denver, CO 80246-1523 <b>EIN:</b> 84-0644739		<b>PAYEE:</b> Colorado Department of Public Health and Environment 4300 Cherry Creek DR S Denver, CO 80246-1523	
<b>PROJECT MANAGER</b>		<b>EPA PROJECT OFFICER</b>	<b>EPA GRANT SPECIALIST</b>
Ron Falco 4300 Cherry Creek Dr. South Denver, CO 80246 <b>Email:</b> ron.falco@state.co.us <b>Phone:</b> 720-507-5614		Rainie Devaney Senator Baucus Federal Bldg. Rm - MO 326 10 West 15th Street Helena, MT 59626 <b>Email:</b> Devaney.Rainie@epa.gov <b>Phone:</b> 406-457-5037	James Baraw 1595 Wynkoop Street Denver, CO 80202 <b>Email:</b> Baraw.James@epa.gov <b>Phone:</b> 303-312-6556
<b>PROJECT TITLE AND DESCRIPTION</b> Colorado Department of Public Health & Environment - Emerging Contaminants in Small and Disadvantaged Communities - Address PFAS contaminant  See Attachment 1 for project description.			
<b>BUDGET PERIOD</b> 10/01/2023 - 09/30/2026	<b>PROJECT PERIOD</b> 10/01/2023 - 09/30/2026	<b>TOTAL BUDGET PERIOD COST</b> \$214,737,500.00	<b>TOTAL PROJECT PERIOD COST</b> \$214,737,500.00
<b>NOTICE OF AWARD</b>  Based on your Application dated 08/30/2023 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$85,895,000.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$85,895,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b>		<b>ORGANIZATION / ADDRESS</b>	
U.S. EPA, Region 8 , Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, CO 80202-1129		U.S. EPA, Region 8, Environmental Protection Agency, Region 8 R8 - Region 8 1595 Wynkoop St Denver, CO 80202	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
<b>Digital signature applied by EPA Award Official</b> Sarah Hulstein			<b>DATE</b> 11/21/2023

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$85,895,000	\$85,895,000
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$0	\$85,895,000	\$85,895,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.442 - Water Infrastructure Improvements for the Nation Small and Underserved Communities Emerging Contaminants Grant Program	Safe Drinking Water Act: Sec. 1459A & Infrastructure Investment and Jobs Act (IIJA) (PL 117-58)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2408TSB003	23	E4SD	08T1	000BL8X87	4101	-	-	\$31,121,500
-	2408TSB003	22	E4SD	08T1	000BL8X87	4101	-	-	\$54,773,500
									\$85,895,000



## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$5,820,976
2. Fringe Benefits	\$1,746,293
3. Travel	\$108,720
4. Equipment	\$0
5. Supplies	\$38,200
6. Contractual	\$0
7. Construction	\$0
8. Other	\$203,651,710
9. Total Direct Charges	\$211,365,899
10. Indirect Costs: 0.00 % Base	\$3,371,601
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$214,737,500
12. Total Approved Assistance Amount	\$214,737,500
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$85,895,000
15. Total EPA Amount Awarded To Date	\$85,895,000

### **Attachment 1 - Project Description**

This agreement provides funding under the Infrastructure Investment and Jobs Act (IIJA) to the State of Colorado to implement resources and priorities to help address Per- and polyfluoroalkyl substances (PFAS) and emerging contaminant challenges; target resources to communities most in need of assistance to ensure that no community is left behind with unsafe, inadequate water; and advance the priorities of equity and environmental justice. Colorado will implement projects such as planning and design followed with remedial activities as appropriate with the use of this award funding.

The activities include projects and activities to address emerging contaminants in small or disadvantaged communities, including but not limited to research and testing; planning and design to address emerging contaminants; treatment of emerging contaminants; source water activities related to emerging contaminants; storage; water system restructuring; providing households access to drinking water services; technical assistance; outreach and education; and workforce or training support to public water systems in addressing emerging contaminants. This agreement is to an eligible state or territory to implement a program to provide assistance to address emerging contaminants in drinking water to small or disadvantaged communities. Funds are to carry out projects and activities needed for public water systems to comply with the Safe Drinking Water Act, programs to provide household water quality testing, activities for a state to respond to a drinking water contaminants, and activities that benefit the impacted communities.

The anticipated deliverables include planning, design and appropriate remedial activities to reduce PFAS and manganese concentration in public drinking water supplies for small and disadvantaged communities across Colorado.

The expected outcomes include improved drinking water quality and reduced PFAS and manganese concentrations.

The intended beneficiaries include residents of small and disadvantaged communities across Colorado.

Direct Beneficiaries of this program include all state residents and occupants, both permanent and temporary. Planning, design and implementation of remedial activities, where appropriate, to reduce emerging contaminant concentrations in public drinking water supplies serving small or disadvantaged communities.

## **Administrative Conditions**

### **General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2023-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

### **A. Correspondence Condition**

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) and [Baraw.James@epa.gov](mailto:Baraw.James@epa.gov)
- MBE/WBE reports (EPA Form 5700-52A): James Baraw at (303) 312 6556, or email at [Baraw.James@epa.gov](mailto:Baraw.James@epa.gov)
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: GS - James Baraw at (303) 312 6556, or email at [Baraw.James@epa.gov](mailto:Baraw.James@epa.gov) and PO - Rainie Devaney at (406) 457-5037 or email at [Devaney.Rainie@epa.gov](mailto:Devaney.Rainie@epa.gov)
- Payment requests (if applicable): GS - James Baraw at (303) 312 6556, or email at [Baraw.James@epa.gov](mailto:Baraw.James@epa.gov) and PO - Rainie Devaney at (406) 457-5037 or email at [Devaney.Rainie@epa.gov](mailto:Devaney.Rainie@epa.gov)
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: PO - Rainie Devaney at (406) 457-5037 or email at [Devaney.Rainie@epa.gov](mailto:Devaney.Rainie@epa.gov)

### **E. Pre-Award Costs**

In accordance with 2 CFR 1500.9, the recipient may charge otherwise allowable pre-award costs (both Federal and non-Federal matching shares) incurred from 10/01/2023 to the actual award date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

## **Programmatic Conditions**

### **Grant Programmatic Terms and Conditions**

## **A. PERFORMANCE REPORTING AND FINAL PERFORMANCE REPORT**

### **Work Plan**

The recipient agrees to perform the activities identified and specified in the approved work plan, which is made part of this Assistance Agreement. The recipient shall provide or make available to the EPA Project Officer copies of the work plans associated with grants and contracts that it may enter into with other agencies and organizations related to activities conducted under this grant. The recipient agrees to notify EPA of modifications or challenges as they arise through the development and progress of the projects and related activities in order to modify workplans or budgets as appropriate to meet the obligations of the project receiving funding. The recipient must submit modifications for EPA approval prior to continued project progress, and related activities. Recipient will meet with EPA regional programmatic and technical point of contact routinely, during the length of the performance period, to review workplan progress and expenditures, challenges to progress of project progress, and public outreach to the communities and stakeholders that are beneficiaries of the grant project and/or activities. EPA's Program and Project Officer will provide recipient(s) with additional instructions and information pertaining to reporting no more than 30 days after receipt of award. Remedies for delinquency on report may result in actions as described in 2 CFR 200.339 such as (a) temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity or (b) wholly or partly suspend or terminate the Federal award. If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the non Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per § 200.339.

### **Performance Reports – Content**

In accordance with 2 CFR 200.329, the recipient agrees to submit performance reports to the EPA's Office of Water's State Revolving Fund data system, with review from the EPA Project Officer, after the end of each reporting period that include brief information on each of the following areas: 1) A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) The reasons why established outputs/outcomes were not met; and 3) Additional pertinent information, including, when appropriate, analysis and explanation of cost overruns or high-unit costs. 4). Data and details on outreach, training, and technical assistance activities, as described in the project's workplan, that occurred during the reporting period. This may include, but are not limited to: a. Amount, type, name, number of participants, and other pertinent details on outreach and training activities, including a list of communities that were contacted as part of the outreach; b. Difficulties with any outreach and training activities; c. Projected number of outreach and training activities for the next performance period; d. information on workforce development and training, including (1) on-the-job training; (2) Skills development; (4) advanced training or certification in the water utility sector relating to construction, utility operations treatment and distribution, green infrastructure, customer service, maintenance, and engineering.

Additionally, the recipient agrees to inform EPA as soon as problems, delays, or adverse conditions which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan are known.

The report will reflect information pertaining to the state and its agency with oversight and the work performed to meet the objectives of the program and the grant activity during the period of performance. Reporting must provide a comprehensive review of the small or disadvantaged communities receiving assistance; the type of assistance provided / activities performed; and the breakdown of financial and direct grant assistance which subsidized the activities performed during the reporting cycle. The recipient will coordinate with the appropriate EPA regional office on reporting elements after the

application has been approved for award. These performance reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, a discussion of expenditures along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

The following information is to be included as part of each performance report, as well as in the final report as a cumulative total of completed work. The information will also be the following:

- 1) Grant ID number.
- 2) Indicate the semi-annual performance period [date] to [date].
- 3) PWS Number(s) (if applicable):
- 4) The report summary will describe the progress of the project and/or activity provided during the reporting period. It also identifies the following information:

Census tract/block of benefitting communities

Project start date/completion date

Awarded amount

Amount of awarded federal funds spent during the reported performance period

Total Project Cost

[If project includes more than the funded amount, breakdown project by funding amounts and identify types of funding, *e.g. state funding, other federal funding, private funding, etc.*

List of emerging contaminants being addressed:

[INSERT List of Contaminants being addressed]

Community Type (indicate and describe the community, including census tract information):

Small

Disadvantaged

Both small and disadvantaged

Does the project address climate resiliency?

Yes, it meets the XXXXX Standards

Provide detailed information regarding the resiliency component of the project, including percentage of the grant directed to also address climate resiliency]

Project Type (multiple selections allowed):

Treatment

Include description of project

Transmission and Distribution

Include description of project

Source

Include description of project

Storage

Include description of project

Creation of New Systems

Include description of project

Consolidation

Include description of project

Household water quality testing, including for unregulated contaminants

Include description of project

Assistance to increase technical, managerial, and financial (TMF) capacity

Did the project or activities include information on the removal of emerging contaminants

Drinking water contamination response efforts

Include description of project

Other (includes space for a narrative description)

Public Health Impact Description (narrative)

Population served (either by Project or by the System)

#### **Performance Reports - Frequency**

The recipient will submit **semi-annual** performance reports, which are required. They are to be submitted electronically to the EPA Project Officer within 30 days after the reporting period (every six-month period). The reporting periods are October 1st through March 31st and April 1st through September 30th. Semi-annual reports are to be submitted electronically within 30 days after the semi-annual reporting period ends. The semi-annual reports must include progress towards the outcomes and outputs of the performance period. In accordance with 2CFR 200.329, the recipient must submit a final performance report no later than 120 days after the end date of the period of performance.

The recipient must submit the final performance report no later than 120 calendar days after the end date of the period of performance, or the project is completion date and/or when all funding is expended.

Remedies for delinquency on report may result in actions as described in 2 CFR 200.339 such as (a) temporarily withhold

cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity or (b) wholly or partly suspend or terminate the Federal award.

### **Subaward Performance Reporting**

The recipient must report on its subaward activities and monitoring activities under 2 CFR 200.332(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.332(e), 2 CFR 200.208 and the 2 CFR Part 200.339 Remedies for Noncompliance.

### **B. Cybersecurity Condition**

#### **State Grant Cybersecurity**

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

### **C. Signage Required**



## 1. Signage Requirements

a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period. The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investingamerica-signage>.

b. Procuring Signs: State agencies and agencies of political subdivisions of states must comply with 2 CFR 200.323, Procurement of recovered materials when procuring signage for projects funded by EPA assistance agreement. EPA encourages other recipients to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

## 2. Public or Media Events

The Recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days’ notice.

## D. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at <https://www.fgdc.gov/>.

## E. REAL PROPERTY

Note that under SDWA § 1459A(g) [42 U.S.C. 300j-19a(g)], this funding cannot be used to purchase land, easements, rights-of way, or relocations (prohibited by statute). In accordance with 2 CFR 200.311, land improvements under this agreement will vest upon acquisition in the recipient. Said improvements must be for the originally authorized purpose as long as needed for that purpose and through project completion, during which time the recipient must not dispose of or encumber its title or other interests in accordance with 2 CFR 200.311.

## F. Use of Logos

If the EPA logo is appearing along with logos from other participating entities on websites, outreach materials, or reports, it must **not** be prominently displayed to imply that any of the recipient or subrecipient’s activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the State of Colorado received financial support from the EPA under an Assistance Agreement. More information is available at: <https://www.epa.gov/stylebook/using-epa-seal-and-logo#policy>

## G. Quality Assurance Competency

Competency of Organizations Generating Environmental Measurement Data: In accordance with Agency Policy Directive

Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the recipient agrees to demonstrate competency prior to carrying out any activities under the award involving environmental information operations (*i.e.*, the collection, production, evaluation or use of environmental information and/or the design, construction, operation, or application of environmental technology). The recipient shall maintain competency for the duration of the agreement's period of performance, and this will be documented during the annual reporting process. To access the Policy and other information about the Policy, visit [http://www.epa.gov/fem/lab\\_comp.htm](http://www.epa.gov/fem/lab_comp.htm). A copy of the Policy is available directly at <https://www.epa.gov/measurements-modeling/documents-about-measurement-competency-under-assistance-agreements>, or a copy may be requested by contacting the EPA Project Officer for this award.

## H. Quality Management Plan

1. As applicable and in accordance with 2 CFR 1500.12, the recipient shall continue to implement and adhere to the Quality Management Plan (QMP) approved by EPA. In accordance with [EPA QA/S-1: EPA Requirements for Quality Management Plans](#), CIO 2105-S-01.0 (QA/S-1) Section 6, the recipient must review its QMP annually for the 5-year life of the QMP to reconfirm the suitability and effectiveness of the approved quality management practices. The recipient shall document the review using the [Region 8 QMP Crosswalk](#). In the QMP Crosswalk the recipient shall identify the specific page number(s) and section(s) of the QMP that addresses the corresponding required QMP element in QA/S-1. QMP review results and/or revisions made must be submitted to the EPA Project Officer and Regional Quality Assurance Manager annually. Significant changes made to the quality system that affect the performance of work for the Agency requiring the revision of an approved QMP are listed in EPA QA/S-1 Section 6 and require submission of the QMP and completed Region 8 QMP Crosswalk for review and approval by the EPA Project Officer and Regional Quality Assurance Manager. This quality assurance requirement applies to all grants, cooperative agreements, contracts, and interagency agreements that involve environmental information operations (*i.e.*, the collection, production, evaluation or use of environmental information and/or the design, construction, operation, or application of environmental technology).
2. A Quality Assurance Project Plan (QAPP) is a record of determinations made during planning by the organization of the data type, quality, and quantity necessary to meet project objectives and the quality assurance and quality control procedures, specifications, and documentation that the recipient will use to ensure the desired results. The recipient agrees to document in a QAPP the quality assurance (QA), quality control (QC), and technical activities that must be implemented to ensure that the project objectives are met. Each QAPP has a maximum period of performance of 5 years.
3. Recipients implementing environmental programs within the scope of the assistance agreement must submit a QAPP to the EPA Project Officer and EPA QA reviewer no later than 90 days after award—unless the EPA-

approved QMP has made such an authorized QAPP approval delegation, based on procedures documented in the QMP. The QAPP shall be prepared for each project in accordance with (IAW) [EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans](#). For each QAPP, complete the [Region 8 QA Document Review Crosswalk](#) (QAPP Review Crosswalk). In the QAPP Crosswalk the recipient shall identify the specific page number(s) and section(s) of the QAPP that addresses the corresponding required QAPP element in QA/R-5, including a detailed explanation for any elements considered not applicable to the grant. The recipient shall submit the completed crosswalk with the QAPP to the EPA Project Officer and QA Reviewer for EPA review and approval—unless the EPA-approved QMP authorizes QAPP approval delegation. Multiple QAPPs may be prepared as directed in the Work Plan and EPA Project Officer or based on procedures documented in the EPA-approved QMP if EPA has made such an authorized delegation.

4. The recipient agrees to ensure that no environmental information operations (defined in Section 1) may occur until the QAPP is reviewed and approved by the EPA Regional Quality Assurance Regional Manager or their delegate (or the recipient, if the EPA-approved QMP authorizes QAPP approval delegation based on procedures documented in the QMP).
5. The recipient must review the current QAPP (s) annually to reconfirm its suitability and effectiveness. The recipient shall document the review using the [Region 8 QA Document Review Crosswalk](#) (QAPP Review Crosswalk). In the QAPP Review Crosswalk the recipient shall identify the specific page number(s) and section(s) of changes to the approved version of the QAPP, and include a description of what changed and why in the crosswalk element's comment box. QAPP Review Crosswalks and/or revised QAPPs must be submitted to EPA Project Officer and QA reviewer annually no later than 60 days prior to the anniversary date of each QAPP's approval date (unless the EPA authorizes QAPP approval delegation based on procedures documented in the EPA-approved QMP). Significant changes to the project require the recipient to modify the QAPP and submit the updated QAPP as a new document as described in Section 3.
6. A copy of the approved QAPP(s) must be submitted to the EPA Project Officer by posting the QAPP to the appropriate site or other electronic document transfer platform agreed to by the PO. The approved QAPP(s) must be retained within the recipient's official records for this agreement.
7. Annually, the recipient shall submit an Annual QA Report to the EPA Project Officer and Regional QA Manager. The Annual QA Report is due August 31<sup>st</sup> of each year. The Annual QA Report shall summarize a review of the State agency's quality program, including:

Documented review of the QMP using the [EPA Region 8 QMP Crosswalk](#), and the recipient shall submit a revised/updated QMP if a revision or update is necessary due to significant changes to the State agency's quality program;

Listing of QA training provided within the State agency for the reporting cycle including the training provider, dates of training, and number of attendees;

Identification of all QA documents including status (current, reviewed, approved, cancelled or backlogged) and whether the

QA document is for new or continuing projects;

Reporting of all assessments conducted in the reporting cycle and the corrective actions taken to resolve any findings; and

Reporting if there are real or perceived risks or vulnerabilities in the quality system that need to be addressed or if support is needed from EPA Region 8



Benton - CDPHE, Erica &lt;erica.benton@state.co.us&gt;

**PSC Contact Center Services Case #: CAS-HHS0001283347**

**GDIT Shared ServiceNow Instance** <gditshared@servicenowservices.com>  
Reply-To: PMS <pmssupport@psc.gov>  
To: erica.benton@state.co.us

Tue, Feb 4, 2025 at 5:06 PM

Thank you for contacting ONE-DHHS Customer Support for the Payment Management System (PMS).

If you requested a payment but it has not been deposited into your bank account the following business day, you can verify the Debit Date of the payment request by running a Payment Transactions inquiry in PMS. Please complete the steps below to run this inquiry.

1. Log into PMS.
2. In the top-left corner of the page, click on the MENU button.
3. Click on the APEX REPORTS link from the expanded menu.
4. Click on the GRANTEE INQUIRY link.
5. For INQUIRY TYPE, select the radio button next to FINANCIAL TRANSACTIONS.
6. In the PAYEE ACCOUNT field, enter your Payee Account Number (PAN). Optional: you may also enter/select additional criteria or even save the inquiry.
7. Click on the RUN INQUIRY button.

The payment request generally posts the next business day. If the Debit Date is displayed, this indicates that the payment has been sent to your financial institution. For further information, please contact your bank.

**If the Debit Date does not display after one business day and you still do not see the payment, please note that due to Executive Orders regarding potentially unallowable grant payments, PMS is taking additional measures to process payments. Reviews of applicable programs and payments will result in delays and/or rejections of payments.**

Your ticket number is listed in the subject line of this email. Please make note of this number as it will be referenced by the PMS Help Desk.

For additional questions or concerns, please contact the ONE- DHHS Help Desk for Payment Management System Support. For more immediate assistance, please call the Help Desk at 1-877-614-5533. The Help Desk is open Monday through Friday, 7 AM to 9 PM EST, excluding federal holidays.

You may also e-mail your request to [PMSSupport@psc.gov](mailto:PMSSupport@psc.gov). Email is typically responded to within one business day. However, it may take up to two business days to receive a response, depending on volume.

For access to our Self-Help Web Portal and further information about ONE-DHHS, please visit <https://dpm-portal.psc.gov>.

Thank you,

ONE-DHHS PMS Customer Support

HHS007

Hello,

We've submitted several payment requests, and some of the due dates have already passed. I understand there are delays, but would it be possible to provide an estimated time frame for when the payments will be processed?

Thank you,

Erica Benton  
Divisions Controller  
- Accounts Payable, Accounts Receivable, Revenue -



**COLORADO**  
Department of Public  
Health & Environment

4300 Cherry Creek Drive South, Denver, CO 80246  
[Erica.Benton@state.co.us](mailto:Erica.Benton@state.co.us) | [www.colorado.gov/cdphe](http://www.colorado.gov/cdphe)

Health: [cdphe.healthaccounting@state.co.us](mailto:cdphe.healthaccounting@state.co.us)  
Environment: [cdphe.environmentalaccounting@state.co.us](mailto:cdphe.environmentalaccounting@state.co.us)  
Payroll: [cdphe\\_payroll@state.co.us](mailto:cdphe_payroll@state.co.us)

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